

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**SAM HAN,**

**Plaintiff,**

**-v-**

**UNIVERSITY OF DAYTON, et al.**

**Defendants.**

**Case No. 3:12-cv-140**

**Judge Thomas M. Rose**

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**ENTRY AND ORDER GRANTING HAN’S MOTION FOR LEAVE TO  
FILE A SECOND AMENDED COMPLAINT (Doc. #14); ORDERING THE  
CLERK TO DOCKET EXHIBIT 1 TO HAN’S REPLY (Doc. #21) TO THE  
DEFENDANT’S RESPONSE TO HIS MOTION TO AMEND AS HAN’S  
SECOND AMENDED COMPLAINT AND FINDING DEFENDANTS’  
MOTION TO DISMISS (Doc. #8) AND HAN’S RULE 56(D) MOTION  
MOOT**

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Plaintiff Dr. Sam Han (“Han”) filed an Amended Complaint in this matter on June 21, 2012. (Doc. #6) The Defendants then filed a Motion To Dismiss Han’s Amended Complaint. (Doc. #8.) In response to the Motion To Dismiss, Han filed a Response that included a Rule 56(D) Motion and a Motion for Leave To File a Second Amended Complaint. (Doc. #14.) The Defendants responded to Han’s Motion for Leave To File a Second Amended Complaint that it should be granted to the extent it is “limited to eliminating patently defective claims” or denied or stayed pending submission of the actual text of the proposed Second Amended Complaint. (Doc. # 19.)

In reply to the Defendants Response, Han filed a proposed Second Amended Complaint. (Doc. #21.) The proposed Second Amended Complaint, among other things, eliminates or corrects defective claims. (Doc. #21, Ex. 1.)

Leave to file an amended complaint should be freely given when justice so requires. Fed. R. Civ. P. 15(a)(1)(B)(2). “A motion to amend should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant or futility.” *Ziegler v. IGP Hog Market, Inc.*, 249 F.3d 509, 519 (6th Cir. 2001).

The Court is not aware of any undue delay, bad faith, undue prejudice to the Defendants or futility. Therefore, Han’s Motion for Leave To File a Second Amended Complaint is GRANTED. Han may amend his Complaint one final time. The Clerk is hereby ordered to docket Exhibit 1 to Han’s Reply To Response To Motion For Leave To File Second Amended Complaint (doc. #21) as Han’s Second Amended Complaint.

The filing of a Second Amended Complaint renders Defendants Motion To Dismiss moot. It also renders Han’s Rule 56(D) motion moot.

**DONE and ORDERED** in Dayton, Ohio this Sixth Day of September, 2012.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record